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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,296	01/15/2004	Shelly Walter	2661.688US12	5170

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P.O. Box 2903
Minneapolis, MN 55402-0903

EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/758,296	Applicant(s) WALTER ET AL.	
	Examiner Lien T. Tran	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2007.
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21, 45-47 and 52 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-21, 45-47 and 52 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Applicant's election without traverse of Group I in the reply filed on 3/28/07 is acknowledged.

The inclusion of claim 51 in Group I in the restriction requirement was a typographical error. Claim 51 depends from claim 34 which is in Group II. Group I includes claims 1-21, 45-47 and 52.

Claims 1-21, 45-47 and 52 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Applicant claims a crust comprising a flour based dough formula comprising 65-75% moisture; however, the specification does not teach how to prepare a dough having such moisture content. The dough recited on page 10 has a moisture content of 35-45% and the dough on page 11 has a moisture content of 35.6%. There is no teaching of forming a dough having 65-75% moisture. One skilled in the art does not know the amount of water and amounts of other ingredients to use to obtain the moisture content claimed.

Claims 3,6,11 and 52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 3, what does applicant mean by an "irregular profiled"? The scope of the claim cannot be determined.

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In claim 6, what does applicant mean by "at least 5% of the surface can depart from the planar nature"; it is not known what is the structure that applicant is claiming.

Claim 11 has the same problem as claim 3.

Claim 52 has the same problem as claim 3. Additionally, it is not clear what the phrase "mimics a hand formed crust" means.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-2,4-6,9-10, 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alessandro (EPA 0691078)

Alessandro discloses a parbaked crust formed from a dough having the composition as set forth in the table on column 2. The crust is topped with topping and baked at temperature of 300-450 degree C. (see page 2)

Alessandro et al do not disclose the amount of oil as claimed, the use of bread crumbs, the dimension of the edge and a square or rectangular shape.

It would have been obvious to use less or more amount of oil depending on the texture and the oil content wanted; this parameter would have been well within the determination of one in the art. It would have obvious to coat the crust with bread crumbs to enhance the crispness of the product. Bread crumb is notoriously well known to be used for such purpose. It would have been obvious to make the pizza crust in any shape desired; this would have been an obvious matter of choice. When the crust has a square shape, it is obvious that the crust will have a fourfold symmetry. It is obvious the crust has the degree of expansion claimed because it is made of the same dough as claimed. It is not clear what applicant mean by 5% of the surface departing from the planar nature; however, whatever the shape is, it would have been obvious to one skilled in the art to form the crust in shape. This is a variation in design without any effect on the functionality of the product. Variation in design would have been an obvious matter of choice. It would have been obvious to form the edge in any dimension depending on the size of the crust desired. This would have been within the determination of one skilled in the art.

Claims 3,7-8,11-21, 52 rejected under 35 U.S.C. 103(a) as being unpatentable over Alessandro in view of Ricke et al

Alessandro does not disclose irregular edge such as sinusoidal and connected line segments.

Ricke et al disclose an ornamental design for pizza crust.

It would have been obvious to one skilled in the art to shape the crust in any design wanted. This would have been an obvious matter of preference. Pizza crust

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having ornamental design is known in the art as exemplified by the Ricke et al disclosure. Variation in design without any effect on the functionality of the product would have been an obvious matter of choice.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Schaible et al disclose parbaked pizza crust.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday, Wed-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Wednesday, April 11, 2007


LIEN TRAN
PRIMARY EXAMINER
Group 1700